

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to Establish
Policies and Cost Recovery Mechanisms for
Generation Procurement and Renewable
Resource Development.

Rulemaking 01-10-024
(Filed October 25, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING DENYING MOTION
OF THE CALIFORNIA WIND ENERGY ASSOCIATION**

This Ruling denies the Emergency Motion of the California Wind Energy Association (CalWEA), but directs Southern California Edison (SCE) to correct its interim renewable energy solicitation process to comply with the August 13, 2003 Assigned Commissioner Ruling (ACR) in this proceeding.

Background

On September 16, 2003 the CalWEA filed a motion seeking changes to the Request for Proposals (RFP) issued by SCE on August 29, 2003.¹ CalWEA alleges that SCE's RFP unduly discriminates against wind-powered generators, unduly burdens all renewable generators, does not comply with Commission requirements, and threatens to undermine the California Renewable Portfolio Standard (RPS) program. In its 21-page Motion, CalWEA identified 16 specific

¹ The full caption of the motion is: Emergency Motion of the California Wind Energy Association for an Ex Parte Order Requiring Changes to Edison's August 2003 Renewable Resource RFP.

problems with SCE's RFP, and provided revisions that it asked the Commission to order, on an *ex parte* basis, no later than September 22, 2003.

Given the seriousness of the allegations, the scope of the relief sought, the potential impacts on other parties and market participants, and informal requests from SCE and The Utility Reform Network (TURN) for an opportunity to respond to CalWEA's Motion, the assigned Administrative Law Judge (ALJ) allowed for responses to be filed and served on September 22. In order to consider those responses prior to the parties being required to submit bids in response to SCE's RFP, the ALJ also ordered that the deadline for responses to SCE's RFP be briefly extended, from September 23 until October 2.²

Responses to CalWEA's Motion were submitted by SCE, TURN, Pacific Gas & Electric (PG&E), Center for Energy Efficiency and Renewable Technologies (CEERT), Green Power Institute (Green Power), and Vulcan Power Company (Vulcan). SCE and PG&E unequivocally oppose CalWEA's Motion. Vulcan, while agreeing with CalWEA on two points, generally opposes CalWEA's Motion, and argues that CalWEA's proposals would unfairly discriminate in favor of wind generation at the expense of other renewable technologies. CEERT supports CalWEA's Motion, and argues that the Commission should either grant the Motion or stay all renewable RFPs

² In its Response to the CalWEA Motion, SCE takes great umbrage at this delay, alleging that the ALJ "almost certainly erred" by doing so without first hearing oral argument from SCE. Given that SCE requested an opportunity to respond to CalWEA's Motion, was provided that opportunity, and is now complaining about the consequences of that opportunity, SCE's argument appears at best to be "rhetorical hyperbole." Accordingly, SCE is directed to the advice of Judge Kozinski: "The parties are advised to chill." *Mattel, Inc. v. MCA Records*, 296 F.3d 894, 908 (9th Cir. 2002).

(including SCE's) until early 2004, at which time solicitations would be made under the RPS program. Green Power agrees with some of CalWEA's criticisms of SCE's RFP, and recommends that the Commission fix specific parts of SCE's RFP. TURN, while agreeing with a number of CalWEA's criticisms, proposes alternative methods to resolving the conflict, including recommendations that SCE hold a bidder's conference and provide clarification that non-conforming bids will be accepted.

Discussion

SCE and CalWEA both make valid points. SCE is correct that it is not required to conduct an RFP at this time, nor is it (yet) required under SB 1078 to procure power from any specific generator or generation technology. As SCE points out, the current RFP is voluntary on SCE's part. (SCE, p.8) Given that the SCE's RFP is voluntary, it would be overly intrusive for the Commission to significantly rewrite the RFP as requested by CalWEA.

Furthermore, as argued by Vulcan and acknowledged by CalWEA, not all renewable generators would necessarily agree with CalWEA's revisions to SCE's RFP. The revisions recommended by CalWEA are neither simple nor easy; some are detailed and complex, while others are quite general, leaving it up to the Commission to develop specific language. In order to assure fairness for all parties, any rewriting of the RFP would require further briefing by the parties. This again does not seem appropriate for a voluntary RFP, and would also necessarily result in a significant delay in SCE's renewable procurement process under its RFP.³

³ CalWEA does not recommend delaying the RFP process.

While CEERT recommends delaying the RFP, no other party supports that position, and CalWEA itself does not recommend delaying the RFP process. While delay could result in an improved RFP, it is not clear that the tradeoff is worthwhile in this particular instance. Finally, some improvement is likely even without delay, as SCE has indicated that it will take the steps recommended by TURN, namely holding a bidder's conference and clarifying that it will accept non-conforming bids. This latter point is significant, as it will allow bidders to submit bids that may not conform with SCE's RFP, but that are more consistent with the Commission's policies and authorities.

Given the problems with CalWEA's requested relief, we deny the Motion's request to unilaterally change the terms of SCE's RFP.

At the same time, however, a number of the criticisms put forth by CalWEA have merit. The ACR of August 13, 2003⁴ states: "Any utility wishing to procure renewable generation prior to full RPS implementation must still abide by the terms of our first RPS implementation decision (D.03-06-071)." What CalWEA identifies as Problem 1 (scheduling risks and imbalance energy), Problem 3 (as-available capacity payment), and Problem 4 (integration cost adder) with SCE's RFP appear to be inconsistent with D.03-06-071. These provisions in SCE's RFP more closely correspond to SCE's litigation position than to the Commission's adopted position, and accordingly are not in compliance with the ACR, which in turn requires compliance with D.03-06-071 for any renewable procurement prior to a full RPS solicitation.

⁴ The caption of the August 13 ACR is: Assigned Commissioner's Ruling Specifying Criteria for Interim Renewable Energy Solicitations.

In addition, Problems 6 and 8 identify barriers set up by the RFP to repowering of wind generation facilities.⁵ In D.03-06-071, we specifically required prompt negotiation to resolve a “stalemate” relating to the repowering of existing wind facilities, and endorsed the goal of repowering wind facilities in prime locations as a “common-sense approach to increasing procurement of renewable energy....” (Id., p.57.) Accordingly, the RFP is inconsistent with the ACR’s direction in this area as well.

SCE is a sophisticated participant in both Commission proceedings and renewable procurement, and should understand the Commission’s RPS Decision, the ACR, and CalWEA’s criticisms of its RFP. We expect that SCE will make sure that its RFP and interim solicitation of renewable energy fully comply with applicable Commission authorities, including the ACR. SCE may need to modify its RFP or otherwise improve its solicitation to ensure that compliance. Given this, as well as SCE’s stated willingness to accept non-conforming bids, there is no need for further delay to SCE’s solicitation process.

PG&E and TURN argue, in essence, that the proof of the pudding is the eating (see, Cervantes, *Don Quixote*), with the response from generators to the RFP providing the best source of feedback on the nature of the RFP itself. This may or may not be the case, as there are many variables involved, and even PG&E and TURN differ on what the appropriate consequences of a poor response should be. Nevertheless, the Commission will review with interest the results of SCE’s interim solicitation of renewable energy.

⁵ Problem 7 also fits into this category, but SCE appears to have already responded to and corrected that problem.

As this proceeding moves forward, the Commission will seek further input from parties on the best ways to prevent and address future conflicts of the sort presented here by CalWEA and SCE.

IT IS RULED that:

1. The Motion of the California Wind Energy Association is denied.
2. Southern California Edison (SCE) shall ensure that its Request for Proposals (RFP) and interim solicitation of renewable energy complies with the Assigned Commissioner's Ruling issued August 13, 2003.
3. SCE shall accept non-conforming bids submitted in response to its RFP.

Dated September 30, 2003, at San Francisco, California.

/s/ PETER V. ALLEN

Peter V. Allen
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Denying Motion of the California Wind Energy Association on all parties of record in this proceeding or their attorneys of record.

Dated September 30, 2003, at San Francisco, California.

/s/ HELEN FRIEDMAN
Helen Friedman

N O T I C E

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